

[DPWH IRR OF REPUBLIC ACT NO. 10752, July 22, 2016]

COMMITTEE FOR THE PREPARATION OF THE IRR OF RA 10752

**IMPLEMENTING RULES AND REGULATIONS
OF REPUBLIC ACT NO. 10752,
AN ACT FACILITATING THE ACQUISITION OF RIGHT-OF-WAY,
SITE OR LOCATION FOR NATIONAL GOVERNMENT
INFRASTRUCTURE PROJECTS**

Pursuant to the provisions of Section 13 of Republic Act (RA) No. 10752, the following Implementing Rules and Regulations (IRR) are hereby promulgated to carry out the provisions of the said Act.

Section 1. COVERAGE

This IRR shall cover the acquisition of real properties needed as right-of-way, site or location for national government projects undertaken by any department, bureau, office, commission, authority or agency of the national government, including any government-owned or controlled corporation or state college or university, authorized by law or its respective charter to undertake national government projects.

Section 2. DECLARATION OF POLICY

This IRR is governed by the fundamental policy declared in Section 9, Article III of the Constitution which states that private property shall not be taken for public use without just compensation, as reiterated in Section 2 of the Act. Towards this end, the State shall ensure that all persons whose real property is affected by national government infrastructure projects are promptly paid just compensation for the expeditious acquisition of the required right-of-way (ROW).

In accordance with Section 3 of the Act, subject to the provisions of RA No. 7160, otherwise known as the "Local Government Code of 1991," Local Government Units (LGUs) may also adopt the provisions of this IRR for the acquisition of ROW for local government infrastructure projects.

Section 3. DEFINITION OF TERMS

For purposes of this IRR, the following terms shall be understood as defined:

- a. **Act** – Means RA No. 10752, otherwise known as "An Act Facilitating the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects," or "The Right-of-Way Act."

b. **Implementing Agency or IA** – refers to any department, bureau, office, commission, authority or agency of the national government, including any government-owned or controlled corporation or state college or university, authorized by law or its respective charter to undertake national government projects.

c. **IRR** – refers to these Implementing Rules and Regulations for the Act.

d. **National Government Projects** – as defined in Section 3 of the Act, refers to all national government infrastructure projects and their public service facilities, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all project covered by RA No. 6957, as amended by RA No. 7718, otherwise known as the "Build-Operate-and-Transfer Law," and other related laws including those involving private sector participation and all necessary activities or projects that are intended for public use or purpose, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. These projects shall include, but not be limited to the following:

- (1) Highways, including expressways, roads, bridges, interchanges, overpasses, tunnels, viaducts and related facilities;
- (2) Railways and mass transit facilities;
- (3) Port infrastructure, like piers, wharves, quays, storage handling and ferry services;
- (4) Airports and air navigation facilities;
- (5) Power generation, transmission and distribution facilities;
- (6) Radio/television broadcasting and telecommunications infrastructure;
- (7) Information technology infrastructure;
- (8) Irrigation, flood control and drainage systems;
- (9) Water and debris retention structures and dams;
- (10) Water supply, sanitation, sewerage and waste management facilities;
- (11) Land reclamation, dredging and development;
- (12) Industrial and tourism estates;
- (13) Government school buildings, hospitals, clinics and other buildings and housing projects;

(14) Public markets and slaughterhouses; and

(15) Other similar or related infrastructure works and services of the national government.

e. **Replacement Cost** – refers to the cost necessary to replace the affected structure or improvement with a similar asset based on current market prices.

f. **Right-of-Way or ROW** – means a part or the entirety of a property, site or location, with defined physical boundaries, used or required by a national government project.

Section 4. MODES OF ACQUIRING REAL PROPERTY

As provided in Section 4 of the Act, the following are the regular modes of ROW acquisition:

- a. Donation
- b. Negotiated Sale
- c. Expropriation

The other modes of ROW acquisition are the following:

- a. Acquisition of Properties under Commonwealth Act (CA) No. 141
- b. Exchange or Barter
- c. Easement of Right-of-Way
- d. Acquisition of Subsurface Right-of-Way
- e. Other modes authorized by law

Section 5. DONATION

The IA may explore the mode of donation of the needed portion or whole of the affected property, i.e., lots with or without improvements, by the property owner concerned, which may be a private individual/corporation or a government agency/corporation.

If the property owner agrees to donate the property to be acquired by the IA as ROW, a deed of donation shall immediately be prepared. The deed of donation shall be simple and unconditional, and contain clauses to the effect that the donation is made not to defraud the donor's creditors, and that the donor has, if necessary, reserved for himself enough property for his family's subsistence, sustenance and support in case the donor is a private individual.

The donation must be accepted by the IA, which shall be indicated in the deed.

The IA shall pay the documentary stamp tax, transfer tax and registration fees,

while the donor shall pay any unpaid real property tax.

Section 6. NEGOTIATED SALE

6.1 Compensation Price

As provided in Section 5 of the Act, the IA may acquire through negotiated sale the required ROW project, by offering to the property owner as compensation price, the sum of the:

- a. current market value of the land;
- b. replacement cost of structures and improvements therein; and
- c. current market value of crops and trees therein.

6.2 Use of Government Financial Institutions and Independent Property Appraisers

To determine the appropriate price offer for the acquisition of ROW through negotiated sale, the IA may engage the services of either of the following, taking into consideration efficiency, economy and the need of the IA to facilitate the implementation of national government infrastructure projects:

- a. A government financial institution (GFI) with adequate experience in property appraisal to be selected by the IA through a competitive process; or
- b. An independent property appraiser (IPA) accredited by:
 - (1) the Bangko Sentral ng Pilipinas (BSP) or
 - (2) a professional association of appraisers recognized by BSP.

The IPA shall be procured by the IA under the provisions of RA No. 9184, otherwise known as the "Government Procurement Reform Act," and its IRR pertaining to consulting services.

For this purpose, the BSP and the professional association of appraisers shall provide their lists of IPAs upon request of the IA. The BSP and the professional association of appraisers shall not be accountable for any acts of the IPAs stated in the list.

Whenever applicable, priority shall be given to the engagement of the services of a GFI.

The IA may use the appraisal reports of the GFI or IPA as one of the bases of the IA's price offer for negotiated sale, consistent with the standards for assessment under Section 12 of this IRR. For this purpose, the IA is encouraged to develop its in-house personnel capable of validating appraisal reports.

6.3 Terms of Reference for GFIs and IPAs

As basis for the engagement of the services of a GFI or IPA, the IA shall prepare the

Terms of Reference (TOR) for the services. The TOR shall contain, among other things, the following basic content:

- a. Background of the project for which the ROW is required, and the objectives of the property appraisal services to be provided by the GFI or IPA;
- b. Desired outputs to be delivered by the GFI or IPA, their description and degree of detail - e.g., estimated market value of the land under consideration, the Replacement Cost of structures and improvements therein, and/or the market value of crops and trees therein,;
- c. Standards and specifications to be observed by the GFI or IPA in providing the services and producing the desired outputs, which shall include those listed under Section 12 of this IRR, as may be applicable;
- d. Duration of the services and timetable for the delivery of outputs by the GFI or IPA; and
- e. Qualifications of the GFI or IPA to be engaged.

In preparing the TOR, the IA may consult the GFI in case of services to be provided by the latter.

The IA shall adopt the TOR template given in Annex A.

6.4 Engagement of GFIs

If the IA decides to engage the services of a GFI, the IA shall enter into a Memorandum of Agreement (MOA) with the GFI in accordance with the following conditions:

- a. The GFI is capable and has adequate experience to undertake the property appraisal services required by the IA;
- b. The GFI must actually undertake the appraisal by administration using its own in-house manpower and resources; and
- c. The IA shall pay the GFI an appropriate fee for its appraisal services in accordance with the terms of the MOA.

6.5 Procurement of IPAs

If the IA decides to engage the services of an IPA to determine the appropriate price of a property to be offered to the property owner through negotiated sale under Section 6 of this IRR, the IA shall procure the IPA in accordance with the rules and procedures for the procurement of consulting services under RA No. 9184 and its IRR,

An IPA must meet the following criteria to qualify for the consulting services:

- a. The IPA must be in the list of the BSP or of a professional association of appraisers recognized by the BSP, provided that IPAs not yet included in the list shall not be barred from joining the procurement for such services, and